

# HOUSE BILL No. 2038

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1; IC 20-1-1.1-11; IC 20-10.1-16-16.

**Synopsis:** Education tax credits. Provides an adjusted gross income tax refundable credit for certain elementary and secondary education expenses. Specifies the various expenses that are qualified education expenses for credit purposes for dependents who are: (1) enrolled in an accredited nonpublic school; (2) enrolled in a nonaccredited nonpublic school; (3) not enrolled in a school; or (4) enrolled in a public school. Requires participation in the ISTEP program for tax credit eligibility but allows certain students to substitute other approved tests for the ISTEP test. Provides that a taxpayer having dependents in both public schools and nonpublic education may claim only one credit. For taxpayers having dependents enrolled in a school, establishes the maximum amount of the credit for household incomes under \$35,000 at \$1,000 per child or \$2,000 per family and for household incomes over \$35,000 at \$500 per child or \$1,000 per family. For taxpayers having dependents who are excused from school (public or nonpublic) attendance, establishes the maximum amount of the credit at \$1,000 per child or family regardless of household income. Requires the department of education to develop a list of certain programs approved for tax credit purposes and to administer the ISTEP program requirement for certain students.

**Effective:** January 1, 2001 (retroactive).

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January 17, 2001, read first time and referred to Committee on Ways and Means.



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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 2038

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-3.1-20 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3       JANUARY 1, 2001 (RETROACTIVE)]:

4       **Chapter 20. Elementary and Secondary Education Tax Credit**  
5       **for Education Expense of Dependents Not Enrolled in Public**  
6       **Schools**

7       **Sec. 1. As used in this chapter, "accredited nonpublic school"**  
8       **means a nonpublic school that:**

9               **(1) voluntarily seeks; and**

10              **(2) receives;**

11       **accreditation as authorized under IC 20-1-1-6(a)(5).**

12       **Sec. 2. As used in this chapter, "dependent" has the meaning set**  
13       **forth in Section 151(c)(1)(B) of the Internal Revenue Code.**

14       **Sec. 3. As used in this chapter, "household income" means the**  
15       **total adjusted gross income of an individual, or of an individual**  
16       **and the individual's spouse if they reside together, for the taxable**  
17       **year for which the credit provided by this chapter is claimed.**

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1       Sec. 4. As used in this chapter, "nonpublic school" has the  
2 meaning set forth in IC 20-10.1-1-3.

3       Sec. 5. As used in this chapter, "public school" has the meaning  
4 set forth in IC 20-10.1-1-2.

5       Sec. 6. As used in this chapter, "qualified education expense"  
6 means any of the following costs incurred by a taxpayer and paid  
7 to others for a dependent who is not enrolled in a public school but  
8 who is eligible for enrollment in a public school in kindergarten  
9 through grade 12:

10       (1) For a dependent who is enrolled in an accredited  
11 nonpublic school, the following:

12       (A) Fees for academic tuition or instruction at the  
13 nonpublic school where the dependent is enrolled,  
14 excluding fees for the teaching of religious tenets,  
15 doctrines, or worship when the purpose of the teaching is  
16 to instill religious tenets, doctrines, or worship.

17       (B) Fees for academic instruction:

18       (i) in grade or age appropriate curricula outside a  
19 regular school year or school day;

20       (ii) in the core curriculum areas of language arts,  
21 mathematics, science, or social studies; and

22       (iii) for a program approved by the department of  
23 education under IC 20-1-1.1-11.

24       (C) Expense for textbooks and instructional materials to a  
25 maximum of two hundred dollars (\$200) per family less the  
26 expense under clause (D). This clause excludes expense for  
27 textbooks and instructional materials for the teaching of  
28 religious tenets, doctrines, or worship when the purpose of  
29 the teaching is to instill religious tenets, doctrines, or  
30 worship.

31       (D) Personal computer expense to a maximum of two  
32 hundred dollars (\$200) per family for:

33       (i) personal computer hardware, excluding single  
34 purpose processors; and

35       (ii) educational software that assists a dependent to  
36 improve or expand knowledge and skills in core  
37 curriculum areas, including language arts, mathematics,  
38 science, or social studies;

39 purchased for use in the dependent's home and not used in  
40 trade or business.

41       (E) Expense for transportation of the dependent to and  
42 from the nonpublic school where the dependent is enrolled,

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excluding transportation for extracurricular activities.

(2) For a dependent who is enrolled in a nonpublic school other than an accredited nonpublic school and who participates in the ISTEP program under IC 20-10.1-16-16, the following:

(A) Fees for academic tuition or instruction at the nonpublic school where the dependent is enrolled, excluding fees for the teaching of religious tenets, doctrines, or worship when the purpose of the teaching is to instill religious tenets, doctrines, or worship.

(B) Fees for academic instruction:

(i) in grade or age appropriate curricula outside a regular school year or school day;

(ii) in the core curriculum areas of language arts, mathematics, science, or social studies; and

(iii) for a program approved by the department of education under IC 20-1-1.1-11.

(C) Expense for textbooks and instructional materials to a maximum of two hundred dollars (\$200) per family less the expense under clause (D). This clause excludes expense for textbooks and instructional materials for the teaching of religious tenets, doctrines, or worship when the purpose of the teaching is to instill religious tenets, doctrines, or worship.

(D) Personal computer expense to a maximum of two hundred dollars (\$200) per family for:

(i) personal computer hardware, excluding single purpose processors; and

(ii) educational software that assists a dependent to improve or expand knowledge and skills in core curriculum areas, including language arts, mathematics, science, or social studies;

purchased for use in the dependent's home and not used in trade or business.

(E) Expense for transportation of the dependent to and from the nonpublic school where the dependent is enrolled, excluding transportation for extracurricular activities.

(3) For a dependent who is excused under IC 20-8.1-3-34 from compulsory school (public or nonpublic) attendance and who participates in the ISTEP program under IC 20-10.1-16-16, the following:

(A) Fees for academic instruction:

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- (i) in grade or age appropriate curricula outside a regular school year or school day;
- (ii) in the core curriculum areas of language arts, mathematics, science, or social studies; and
- (iii) for a program approved by the department of education under IC 20-1-1.1-11.

(B) Expense for textbooks and instructional materials to a maximum of one thousand dollars (\$1,000) per family less the expense under clause (C). This clause excludes expense for textbooks and instructional materials for the teaching of religious tenets, doctrines, or worship when the purpose of the teaching is to instill religious tenets, doctrines, or worship.

(C) Personal computer expense, to a maximum of two hundred dollars (\$200) per family for:

- (i) personal computer hardware, excluding single purpose processors; or
- (ii) educational software that assists a dependent to improve or expand knowledge and skills in core curriculum areas, including language arts, mathematics, science, or social studies;

purchased for use in the dependent's home and not used in trade or business.

**Sec. 7.** As used in this chapter, "taxpayer" means an individual who has any adjusted gross income tax liability.

**Sec. 8. (a)** A taxpayer who does not claim a credit under IC 6-3.1-22, has a household income of thirty-five thousand dollars (\$35,000) or less, and incurs a qualified education expense is entitled to a credit against the adjusted gross income tax imposed by IC 6-3 for the taxable year during which the taxpayer incurs the qualified education expense. The credit is equal to the least of:

- (1) the taxpayer's qualified education expense;
- (2) one thousand dollars (\$1,000) per dependent; or
- (3) either:
  - (A) two thousand dollars (\$2,000) per family having a dependent described in section 6(1) or 6(2) of this chapter; or
  - (B) one thousand dollars (\$1,000) per family having a dependent described in section 6(3) of this chapter.

**(b)** A taxpayer who does not claim a credit under IC 6-3.1-22, has a household income of more than thirty-five thousand dollars (\$35,000), and incurs a qualified education expense is entitled to a

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credit against the adjusted gross income tax imposed by IC 6-3 for the taxable year during which the taxpayer incurs the qualified education expense. The credit is equal to the least of:

- (1) the taxpayer's qualified education expense;
- (2) either:
  - (A) five hundred dollars (\$500) per dependent for a dependent described in section 6(1) or 6(2) of this chapter;
  - or
  - (B) one thousand dollars (\$1,000) per dependent for a dependent described in section 6(3) of this chapter; or
- (3) one thousand dollars (\$1,000) per family.

**Sec. 9.** If both spouses reside in the same household, only one (1) credit may be claimed by the spouses under this chapter for the taxable year. However, in the case of a husband and wife who incur qualified education expense and file separate tax returns, the husband and wife may take the credit in equal shares, or one (1) spouse may take the entire credit.

**Sec. 10.** If the amount of the credit provided by this chapter that a taxpayer uses during a particular taxable year exceeds the sum of the taxes imposed by IC 6-3 for the taxable year after the application of all credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter, the excess shall be returned to the taxpayer as a refund.

**Sec. 11.** Acceptance by a taxpayer of a credit under this chapter for qualified education expense for a dependent who is described in section 6(2) or 6(3) of this chapter does not provide any governmental entity or agency of the state of Indiana with jurisdiction, authority, or control over the dependent's educational provider.

SECTION 2. IC 6-3.1-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]:

**Chapter 22. Elementary and Secondary Education Tax Credit for Education Expense of Dependents Enrolled in Public Schools**

**Sec. 1.** As used in this chapter, "dependent" has the meaning set forth in Section 151(c)(1)(B) of the Internal Revenue Code.

**Sec. 2.** As used in this chapter, "household income" means the total adjusted gross income of an individual, or of an individual and the individual's spouse if they reside together, for the taxable year for which the credit provided by this chapter is claimed.

**Sec. 3.** As used in this chapter, "public school" has the meaning set forth in IC 20-10.1-1-2.



1        **Sec. 4.** As used in this chapter, "qualified education expense"  
 2 means any of the following costs incurred by a taxpayer and paid  
 3 to others for a dependent who is enrolled in a public school for a  
 4 grade from kindergarten through grade 12:

5        (1) Transfer tuition payments under IC 20-8.1-6.1.

6        (2) Fees for academic instruction:

7            (A) in grade or age appropriate curricula outside a regular  
 8 school year or school day;

9            (B) in the core curriculum areas of language arts,  
 10 mathematics, science, or social studies; and

11            (C) for a program approved by the department of  
 12 education under IC 20-1-1.1-11.

13        (3) Expense for textbooks and instructional materials to a  
 14 maximum of two hundred dollars (\$200) per family less the  
 15 expense under subdivision (4). This subdivision excludes  
 16 expense for textbooks and instructional materials for the  
 17 teaching of religious tenets, doctrines, or worship when the  
 18 purpose of the teaching is to instill religious tenets, doctrines,  
 19 or worship.

20        (4) Personal computer expense to a maximum of two hundred  
 21 dollars (\$200) per family for:

22            (A) personal computer hardware, excluding single purpose  
 23 processors; and

24            (B) educational software that assists a dependent to  
 25 improve or expand knowledge and skills in core  
 26 curriculum areas, including language arts, mathematics,  
 27 science, or social studies;

28        purchased for use in the dependent's home and not used in  
 29 trade or business.

30        **Sec. 5.** As used in this chapter, "taxpayer" means an individual  
 31 who has any adjusted gross income tax liability.

32        **Sec. 6.** (a) A taxpayer who does not claim a credit under  
 33 IC 6-3.1-20, has a household income of thirty-five thousand dollars  
 34 (\$35,000) or less, and who incurs a qualified education expense is  
 35 entitled to a credit against the adjusted gross income tax imposed  
 36 by IC 6-3 for the taxable year during which the taxpayer incurs the  
 37 qualified education expense. The credit is equal to the least of:

38            (1) the taxpayer's qualified education expense;

39            (2) one thousand dollars (\$1,000) per child; or

40            (3) two thousand dollars (\$2,000) per family.

41        (b) A taxpayer who does not claim a credit under IC 6-3.1-20,  
 42 has a household income of more than thirty-five thousand dollars

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(\\$35,000), and who incurs a qualified education expense is entitled to a credit against the adjusted gross income tax imposed by IC 6-3 for the taxable year during which the taxpayer incurs the qualified education expense. The credit is equal to the least of:

- (1) the taxpayer's qualified education expense;
- (2) five hundred dollars (\$500) per child; or
- (3) one thousand dollars (\$1,000) per family.

**Sec. 7.** If both spouses reside in the same household, only one (1) credit may be claimed by the spouses under this chapter for the taxable year. However, in the case of a husband and wife who incur qualified education expense and file separate tax returns, the husband and wife may take the credit in equal shares or one (1) spouse may take the entire credit.

**Sec. 8.** If the amount of the credit provided by this chapter that a taxpayer uses during a particular taxable year exceeds the sum of the taxes imposed by IC 6-3 for the taxable year after the application of all credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter, the excess shall be returned to the taxpayer as a refund.

SECTION 3. IC 20-1-1.1-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: **Sec. 11.** The department shall develop criteria and establish and publish a list of programs that the department approves under the criteria for purposes of an education tax credit for fees for academic instruction outside a regular school year or school day under IC 6-3.1-20 and IC 6-3.1-22.

SECTION 4. IC 20-10.1-16-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: **Sec. 16. (a)** As used in this section, "individual" refers to a person who:

- (1) is:
  - (A) enrolled in a nonpublic school other than an accredited nonpublic school; or
  - (B) is not enrolled in a school (either public or nonpublic); and
- (2) is the dependent (as defined in Section 151(c)(1)(B) of the Internal Revenue Code) of a taxpayer who:
  - (A) desires to claim an education tax credit under IC 6-3.1-20; and
  - (B) voluntarily makes a request to the department that the dependent participate in the ISTEP program.



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(b) An individual may participate in the ISTEP program.

(c) The department shall develop procedures for an individual to participate in the ISTEP program. The procedures that the department develops must include the following:

(1) Annually providing a document to the taxpayer to show that an individual is participating in the ISTEP program. This document must be suitable for the taxpayer to use to file for an education tax credit.

(2) Determining the appropriate age or grade level of each individual only for purposes of establishing the years when the individual is in an age or grade level that is tested under the ISTEP program.

(3) For an individual that is in age or grade levels that are tested under the ISTEP program:

(A) administer the ISTEP test at no charge at approved sites throughout Indiana where an individual may take the ISTEP test; and

(B) allow an individual to elect to participate in the ISTEP program by substituting for the ISTEP test a norm referenced test or criterion referenced test when the department approves:

(i) the test; and

(ii) the manner of administration of the test.

(4) Making appropriate provision for an individual who is a child with a disability (as defined in IC 20-1-6-1) whose education program does not include regular classroom instruction in mathematics and English/language arts so that:

(A) the individual is not required to take an assessment test; and

(B) a document is provided under subdivision (1) so that the taxpayer may file for an education tax credit.

(d) If an individual participates in the ISTEP program in a year when the ISTEP test is not given to the individual's age or grade level and then is withdrawn from the ISTEP program when the individual's age or grade level is tested, the individual may not renew participation in the ISTEP program under this section unless the individual takes the missed ISTEP test.

(e) The department may distribute an individual's ISTEP test results only to the parent of the individual. The department may not compile the ISTEP test results of individuals. An employee of the department, an employee of the state of Indiana, or a person providing services to the department or to the state of Indiana

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1     **under a contract who violates this subsection commits a Class A**  
2     **misdemeanor.**

3         SECTION 5. [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]  
4     **IC 6-3.1-20 and IC 6-3.1-22, both as added by this act, apply only**  
5     **to taxable years beginning after December 31, 2000.**

6         SECTION 6. An emergency is declared for this act.

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